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OAG—1—08

Mr. Jeffrey B. Fuge
Corporation Counsel
Polk County
1005 West Main Street, Suite 100
Balsam Lake, WI 54810

Dear Mr. Fuge:

You ask whether gifts, grants, and donations to a county human services department created under Wis. Stat. § 46.23 may be accepted only by the county board of supervisors or instead may be accepted by the human services department itself.

In my opinion, because there is no explicit statutory authority for county human services departments to accept such items, the statutory scheme contemplates that gifts, grants, and donations to a county human services department created under Wis. Stat. § 46.23 may be accepted only by the county board of supervisors.

STATUTES INVOLVED

I. POWERS OF COUNTY BOARD OF SUPERVISORS.

Wisconsin Stat. § 51.423 provides in part:

(2) From the appropriations under s. 20.435(7)(b) and (o), the department shall distribute the funding for services provided or purchased by county departments under s. 46.23, 51.42, or 51.437 to such county departments as provided under s. 46.40. County matching funds are required for the distributions under s. 46.40(2) and (9)(b). Each county's required match for the distributions under s. 46.40(2) for a year equals 9.89% of the total of the county's distributions under s. 46.40(2) for that year for which matching funds are required plus the amount the county was required by s. 46.26(2)(c), 1985 stats., to spend for juvenile delinquency-related services from its distribution for 1987. Each county's required match for the distribution under s. 46.40(9)(b) for a year equals 9.89% of that county's amounts described in s. 46.40(9)(a) (intro.) for that year. **Matching funds may be from county tax levies, federal and state revenue sharing funds, or private donations to the counties that meet the requirements specified in sub. (5). Private donations may not exceed 25% of**

the total county match. If the county match is less than the amount required to generate the full amount of state and federal funds distributed for this period, the decrease in the amount of state and federal funds equals the difference between the required and the actual amount of county matching funds.

. . . .

(5)(a) A private donation to a county may be used to match the state grant-in-aid under s. 46.495(1)(d) or under sub. (2) only if the donation is both of the following:

1. Donated to a county department under s. 46.215, 46.22, 51.42 or 51.437 and the donation is under the administrative control of such county department.

2. Donated without restrictions as to use, unless the restrictions specify that the donation be used for a particular service and the donor neither sponsors nor operates the service.

Wisconsin Stat. § 59.52(19) authorizes the county board of supervisors to “[a]ccept donations, gifts or grants for any public governmental purpose within the powers of the county.”

II. POWERS OF COUNTY HUMAN SERVICES DEPARTMENTS.

Wisconsin Stat. § 46.22(1)(c)8., provides that a county board may in its discretion grant a county human services department the power:

8. To administer child welfare services including services to juveniles who are delinquent and to children who are mentally retarded, dependent, neglected or nonmarital, and to other children who are in need of such services. In administering child welfare services the county department of social services shall be governed by the following:

a. The county department of social services may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children in the county with a single-county department of social services or in the counties with a multicounty department of social services.

b. The county department of social services shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors in a county with a single-county department of social services or by the county boards of supervisors

in counties with a multicounty department of social services **or donated by individuals or private organizations.**

ANALYSIS

Wisconsin Stat. § 59.52(19) expressly authorizes the county board of supervisors to “accept donations, gifts or grants for any public governmental purpose within the powers of the county.” There is no similar language in Wis. Stat. § 46.22 expressly authorizing county human services departments, boards, or directors to accept gifts, grants, and donations. 73 Op. Att’y Gen. 125 (1984) concluded that the specific language concerning the acceptance of gifts, grants, and donations by the county board in what is now Wis. Stat. § 59.52(19) coupled with the lack of any comparable language in Wis. Stat. § 46.18 requires the county board, rather than the trustees of county institutions operated under Wis. Stat. § 46.18, to accept gifts, grants, and donations to such county institutions. Under the reasoning in 73 Op. Att’y Gen. 125, gifts, grants, and donations to a county human services department may be accepted only by the county board and may not by the county human services department itself.

I recognize that statutes not considered in 73 Op. Att’y Gen. 125 are involved here. Wisconsin Stat. § 51.423(5)(a)1. refers to funds “[d]onated to a county department under s. 46.215, 46.22, 51.42 or 51.437 . . . [provided that] the donation is under the administrative control of such county department” and Wis. Stat. § 46.22(1)(c)8.b. provides that a county board may in its discretion grant the county human services department the power to “administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors . . . or donated by individuals or private organizations.”

Statutes relating to the same subject are to be construed together and harmonized. *State v. Robinson*, 140 Wis. 2d 673, 677, 412 N.W.2d 535 (Ct. App. 1987). Because there is no language in Wis. Stat. §§ 46.215, 46.22, 51.42 or 51.437 expressly authorizing the departments referred to in those statutes to accept gifts, grants or donations, I view the express language concerning the acceptance of gifts, grants, or donations by the county board in Wis. Stat. § 59.52(19) to be controlling. I therefore construe Wis. Stat. § 51.423(5)(a)1. as recognizing that a restriction by the donor to the effect that a gift, grant, or donation can only be used by one of the specified boards must be honored if the county board decides to accept a donation containing such a restriction. See *Nelson v. Madison Lutheran Hospital & Sanatorium*, 237 Wis. 518, 523-25, 297 N.W. 424 (1941). Similarly, I construe the language in Wis. Stat. § 46.22(1)(c)8.b. as recognizing that funds donated for child welfare purposes that are accepted by the county board may be expended by the county human services department for such purposes without any appropriation of those donated funds by the county board to the human services department. I do not view Wis. Stat. § 46.22(1)(c)8.b. as expressly authorizing the county human services department to accept monetary donations.

It is the function of the county board of supervisors to establish the budget of the county human services department. *See* 73 Op. Att’y Gen. 96, 97 (1984); 69 Op. Att’y Gen. 128, 130-31 (1980). When establishing the budget of the county human services department, the county board must decide whether to appropriate the matching amounts that are required in order to obtain state funds under Wis. Stat. § 51.423. In doing so, the county board must decide whether to use private donations to match state funds, must be certain that any such private donations do not exceed twenty-five percent of the total county match under the limitation contained in Wis. Stat. § 51.423(2), and must be certain that any such private donations are sufficiently unrestricted so as to satisfy the requirements for matching funds in Wis. Stat. § 51.423(5)(a)1. and 2. Given the county board’s extensive authority over the budget of the county human services department, it makes sense that the county board should decide whether or not to accept gifts, grants, or donations to the county human services department. There may be other, non-budgetary reasons why it would be preferable to authorize county human services departments themselves to accept gifts, grants, or donations. The Legislature could enact language like that in Wis. Stat. § 59.52(19) that would expressly authorize county human services departments to directly accept gifts, grants, or donations if there are valid policy reasons for doing so.

CONCLUSION

I therefore conclude that gifts, grants, and donations to a county human services department created under Wis. Stat. § 46.23 may be accepted only by the county board of supervisors and may not be accepted by the county human services department itself.

Sincerely,

J.B. Van Hollen
Attorney General

JBVH:FTC:cla

Mr. Jeffrey B. Fuge
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CAPTION: Gifts, grants, and donations to a county human services department created under Wis. Stat. § 46.23 may be accepted only by the county board of supervisors and may not be accepted by the county human services department itself.